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October 7, 2011

Honorable Jack Zouhary  
U.S. District Court  
Northern District of Ohio  
1716 Spielbusch Avenue  
Room 203  
Toledo, Ohio 43604-1363

***Via ECF***

Re: ***In Re Polyurethane Foam Antitrust Litigation, MDL No. 2196***  
***Sealy Corporation et al. v. Carpenter Co., et al., Case No. 1:11-pf-10007***  
***Factory Direct, Inc. v. The Carpenter Co., et al., Case No. 1:11-pf-10011***

Dear Judge Zouhary:

Enclosed please find a proposed Stipulation and Order of Dismissal, Without Prejudice, of the claims against Ohio Decorative Products, Inc. in the above-referenced cases. Counsel for Factory Direct and Ohio Decorative have authorized us to sign this Stipulation on their behalf.

Respectfully,

William J. Blechman  
*Counsel for Sealy Plaintiffs*

WJB:mb

cc: Kurt Rupert, Esquire (w/ encl.)  
David A. Elder, Esquire (w/ encl.)  
*Counsel for Factory Direct*

Kendall Millard, Esquire (w/ encl.)  
*Counsel for Ohio Decorative*

Enclosure

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

IN RE: POLYURETHANE FOAM ANTITRUST  
LITIGATION

**MDL Docket No. 2196**

**Index No. 10-MD-2196(JZ)**

**Hon. Jack Zouhary**

This document relates to:

Sealy Corporation, et al v. Carpenter Co., et al,  
Case No: 1:11-pf-10007 (JZ) (N.D. Ohio)

Factory Direct, Inc. v. The Carpenter Co., et al,  
Case No: 1:11-pf-10011 (JZ) (N.D. Ohio)

**STIPULATION AND ORDER**

This Stipulation and Order is submitted by Plaintiffs Sealy Corporation, Select Comfort Corporation, National Bedding Company L.L.C. d/b/a Serta Mattress Company, Simmons Bedding Company, Tempur-Pedic International, Inc., and La-Z-Boy Incorporated (the "Sealy Plaintiffs"), Plaintiff Factory Direct ("Factory Direct"), and Defendant Ohio Decorative Products, Inc. ("Ohio Decorative") (collectively the "Parties") in the above-referenced cases.

Whereas, the Sealy Plaintiffs and Factory Direct have named Ohio Decorative Products, Inc. ("Ohio Decorative") in Amended Complaints, *see Sealy Corporation, et al v. Carpenter Co., et al*, Case No: 1:11-pf-10007 (JZ) (N.D. Ohio); and *Factory Direct, Inc. v. The Carpenter Co., et al*, Case No: 1:11-pf-10011 (JZ) (N.D. Ohio);

Whereas the Direct and Indirect Purchaser Classes' Consolidated Amended Complaints name Ohio Decorative as a Defendant and contain allegations regarding Ohio Decorative allegedly being the alter ego of Flexible Foam; *see* Direct Purchaser Plaintiffs' Consolidated Amended Class Action Complaint, MDL 2196 (N.D. Oh.) (Dk. 46); and Indirect Plaintiffs' Consolidated Amended Complaint, MDL 2196 (N.D. Oh.) (Dk. 52);

Whereas, paragraph 23(b) of the Sealy Plaintiffs' Amended Complaint and paragraph 16(b) of the Factory Direct Amended Complaint contain allegations regarding Ohio Decorative's alleged domination or control over Defendant Flexible Foam Products, Inc. so as to be the alter ego which are not contained in the Direct and Indirect Classes' Consolidated Amended Complaints;

Whereas, the Sealy Plaintiffs and Factory Direct contend that the allegations in paragraph 23(b) and paragraph 16(b), respectively, of their Amended Complaints are legally and factually different from those contained in the Direct and Indirect Classes' Consolidated Amended Complaint and are legally sustainable, while Ohio Decorative contends that the Sealy Plaintiffs' and Factory Direct's allegations with respect to Ohio Decorative are not legally sufficient; and

Whereas, the Sealy Plaintiffs and Factory Direct are mindful of the approach already taken by the Court with respect to the dismissal, without prejudice, of Ohio Decorative from the Direct and Indirect Class cases subject to discovery from and tolling of the statute of limitations by Ohio Decorative;

It is accordingly

Stipulated and Agreed by the Sealy Plaintiffs, Factory Direct and Ohio Decorative as follows:

1. Ohio Decorative is dismissed, without prejudice, as a Defendant in the Sealy Plaintiffs' Amended Complaint pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), with each side to bear its own attorneys' fees and costs.
2. Ohio Decorative is dismissed, without prejudice, as a Defendant in the Factory Direct Amended Complaint pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), with each side to bear its own attorneys' fees and costs.

3. Ohio Decorative agrees to make a corporate representative available for deposition of up to 7 hours without the need for a third-party subpoena and subject to the Order Regarding Discovery Protocols (Dk. 241) and the Stipulation and Order on dismissal of Ohio Decorative from the Direct and Indirect Class Actions (Dk. 283). The Sealy Plaintiffs and Factory Direct agree to coordinate with the Direct and Indirect Class Plaintiffs regarding that deposition. This Ohio Decorative corporate deposition is without prejudice to other discovery the Sealy Plaintiffs and Factory Direct may seek from Ohio Decorative (or Flexible Foam).

4. The deposition of Ohio Decorative will occur at a location mutually agreeable to the Parties or so ordered by the Court.

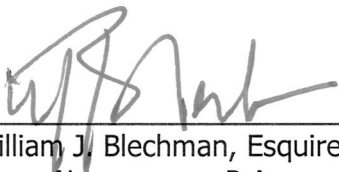
5. If the Sealy Plaintiffs and/or Factory Direct find a basis to bring Ohio Decorative back into this litigation as a Defendant, then the Sealy Plaintiffs and/or Factory Direct may move for leave of Court to do so, and Ohio Decorative will have an opportunity to respond. Ohio Decorative agrees that if the Court orders it back into either or both of the above-referenced cases as a Defendant, then Ohio Decorative will waive formal service of any Amended Complaints, and service on its counsel will be effective. If Ohio Decorative is later added back into either of the above-referenced cases as a Defendant, then this Stipulation and corresponding Order for dismissal, without prejudice, of Ohio Decorative in the above-referenced cases shall not be regarded as a dismissal under Fed.R.Civ.P. 41(d).

6. The Sealy Plaintiffs, Factory Direct, and Ohio Decorative agree that all applicable State and Federal statutes of limitations for the filing of any claims, defenses, counterclaims and/or third-party claims concerning the matters alleged in the Sealy Plaintiffs' Amended Complaint (Dk. 8) and/or the Factory Direct Amended Complaint (Dk. 39), and any amendments to either of those Amended Complaints, shall be tolled until the date for adding

new parties, as set forth in Paragraph 4 of the Joint Scheduling Order (Dk. 112), or any amended date for adding new parties.

7. The Sealy Plaintiffs, Factory Direct, and Ohio Decorative agree that by entering into this Stipulation or Ohio Decorative making a corporate representative available for deposition or producing/providing other discovery or participating in such deposition or producing/providing other discovery, the Sealy Plaintiffs, Factory Direct and Ohio Decorative expressly preserve and do not waive, prejudice, release or otherwise lose any available claims or defenses that may be available under the Federal Rules of Civil Procedure or any other rules, statutory or common law claim or defense. Neither the execution of this Stipulation nor anything contained in this Stipulation is intended to be, nor shall be deemed to be, an admission of any liability or defense by Ohio Decorative, or an admission of the existence of facts upon which liability or a defense could be based or contested by Ohio Decorative.

STIPULATED BY:



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***Counsel for Defendant Ohio Decorative  
Products, Inc.***

SO ORDERED: \_\_\_\_\_, 2011

\_\_\_\_\_  
Honorable Jack Zouhary  
United States District Judge

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